BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.

In the Matter of IP-Enabled Services	)	WC Docket No. 04-36

COMMENTS OF THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

The Public Service Commission of the State of Missouri ("MoPSC") offers the following comments in response to the Federal Communication Commission's ("Commission") Notice of Proposed Rulemaking (NPRM) released in the above docketed case on March 10, 2004. The NPRM examines issues relating to services and applications making use of Internet Protocol (IP) and seeks comment on various issues related to the impact that IP-enabled services have had and will continue to have on the United States' communications landscape. The scope of the proceeding, and these comments, includes services and applications relying on Internet Protocol (referred to as IP-enabled services or VoIP).

I. Introduction

In preparation for these comments the MoPSC directed its Telecommunications Department Staff to facilitate industry workshops and prepare a report on different uses of VoIP technology, and to assess the significance that widespread deployment of VoIP technology may have on telecommunications in Missouri. The industry task force report, "A Study of Voice Over Internet Protocol in Missouri", was filed in Case No. TW-2004-0324 and is available on the MoPSC's website at http://www.psc.mo.gov/news/voip_task_force_%20report.pdf.

On May 3, 2004, the MoPSC held a VoIP Forum to allow panelists from all sectors of the telecommunications and VoIP industries to discuss and answer questions on VoIP. The

MoPSC is in the process of obtaining transcripts of the Forum, which will be placed on the MoPSC website at http://www.psc.mo.gov/VOIP.asp as soon as they are completed. The Task Force Report and the VoIP Forum discussions assisted in preparing for the following comments in response to the Commission's NPRM.

II. An Overview of the Competitive Landscape

In paragraph 1 of the NPRM, the Commission seeks comment on the impact that IP-enabled services have had and will continue to have on the United States' communications landscape. According to forecasts by market research and consulting firm Parks Associates, there will be 4.5 million residential VoIP subscribers in the United States by 2007.[1] On a comparative basis, this number represents approximately 2.4 percent of the current wireline access lines in the United States.[2] According to another study, approximately 4 percent of circuit switched national and international US long distance revenues will be derived from VoIP by 2006.[3] Finally, according to the Commission's reference in footnote 34 of the NPRM, the total world retail residential and enterprise Internet protocol voice traffic volume was approximately 47.5 billion minutes, while approximately 8 trillion minutes were carried using the public switched telephone network. IP-enabled traffic represents approximately six-tenths of one percent of the total minutes.

Recognizing these trends and statistics, the Missouri VoIP Industry Task Force (Task Force) identified five impacts of IP-enabled services technology: (1) sales tax revenues, (2) Relay Missouri funding, (3) E-9-1-1 funding, (4) regulatory assessment funding and (5) local

[1] "Viral VoIP - The Spread of Residential IP Telephony": Xchange magazine, March 2004.
[2] The Industry Analysis Division of the Federal Communications Commission's Wireline Competition Bureau estimates there were a total of 187.5 million traditional switched access lines and 140.8 million mobile wireless subscribers in the United States as of December 31, 2002.
[3] Gartner Group, United States: *Fixed Public Network Services*, 2001-2007 (April 2003).

exchange carrier revenue impact. Each of these impacts, while examined on a Missouri-specific basis, can presumably be extrapolated to apply nationwide.

III. Potential Impacts of IP-enabled Services

The Task Force determined IP-enabled services may have an impact on sales tax revenues. Through the imposition of sales taxes at the state and local levels, local and long distance carriers contribute substantially to a state's tax base. In calendar year 2002, the Missouri Department of Revenue indicated reported taxable sales for telephone communications in excess of $2.3 billion (excluding wireless communications). Because sales taxes are not collected from the end users of IP-enabled services, it is conceivable that as IP-enabled services become a substitute for traditional telephone service, there may be less taxable revenue derived from end user telephone lines. The extent of this impact will depend on the extent IP-enabled services serve as a substitute for traditional telephone service, the nature of the IP-enabled services used, the market penetration that IP-enabled services achieve and the legal and regulatory treatment that is applied to various IP-enabled services. The tax base may also be impacted by the method used to reach the Internet (such as via dial-up, broadband or cable facilities) as well as any local tax rates applicable to Internet-type services.

IV. Potential Impact on Telecommunications Relay Services

IP-enabled services may also have an impact on Telecommunications Relay Services (TRS) funding. Contribution to the TRS fund is the product of a telecommunications company's revenues for the prior calendar year and a contribution factor determined annually by the Commission. The contribution factor is based on the ratio between expected TRS Fund expenses to interstate end-user telecommunications revenues.

V. Potential Impact on Missouri Relay Fund

Missouri also has a state relay fund. This program is administered by the MoPSC and is funded entirely by a line item surcharge on every local exchange access line in Missouri. The Relay Missouri program is currently funded at approximately $4 million annually. The maximum number of lines subject to Relay Missouri funding is 100 lines per customer location. Capping an IP-enabled service provider's Relay Missouri contribution to a maximum of 100 lines per customer location may not be representative of the amount of IP-enabled traffic that may be traveling to and from the public switched telephone network. Again, the extent of any impact, whether to the federal or state fund, would depend on the extent to which IP-enabled services replace traditional local telephone service, and the legal and regulatory treatment that is applied to IP-enabled services that are used as a replacement for local telephone service.

VI. Potential Impact on Emergency Telephone (E-9-1-1) Systems

IP-enabled services may also have an impact on the present funding of emergency telephone (E-9-1-1) systems. Realizing that states may have various methods for funding emergency systems, the MoPSC offers Missouri-specific information to assist the Commission in reviewing this issue. The Missouri Office of Administration indicates that sixty-six counties in Missouri fund emergency telephone service through the use of a line item surcharge on local telephone bills. These sixty-six counties represent 72 percent of the counties who have established E-9-1-1 service. (Other counties finance E-9-1-1 through general revenue or a sales tax.)

Because some IP-enabled service providers lease telephone lines on a retail basis, it may be accurately stated that some IP-enabled service providers contribute financially to county E-9-1-1 systems that are funded by line item surcharges on telephone bills. However, the retail lines used by such IP-enabled service providers are used to aggregate IP-enabled traffic to and from

the public switched telephone network, and the amount of contribution by IP-enabled service providers may not be representative of the actual number of IP-enabled service end users. Moreover, in Missouri the maximum number of lines subject to the E-9-1-1 surcharge is limited to 100 lines per person per location (RSMo, Section 190.305.3). Capping an IP-enabled service provider's emergency telephone contribution to a maximum of 100 lines may not be representative of the amount of IP-enabled services traffic that may be traveling to and from the public switched telephone network. As with other public services financed by line item contributions on local telephone bills, some Public Safety Answering districts in Missouri may expect to be impacted by IP-enabled services. Again, the extent of such impacts will depend on the extent IP-enabled services serve as a substitute for traditional local telephone lines, and it will depend on the extent to which the Commission declares the various IP-enabled services as "information service" or "telecommunications service".

VII. Potential Impact on Assessment Revenues of State Commissions

IP-enabled services may also impact assessment revenues of state commissions. If IP-enabled services are found to be "information services" and are, therefore, not subject to intrastate revenue reporting requirements, there will likely be an impact on the regulatory assessment for services that are similar, but still classified as telecommunications services. As end users migrate telecommunications services to services classified as information services, service providers will likely see a reduction in telecommunications service usage and a corresponding reduction in the revenues generated by those services. Consequently, assessments levied by regulatory agencies will be applied against shrinking annual revenue bases and potentially across fewer contributing carriers.

VIII. Potential Impact on Switched Access Revenues

Local exchange carriers participating in the Task Force are concerned about the impact of IP-enabled services on switched access revenues. If switched access rates are not applicable on IP-enabled services traffic then the local exchange carriers are concerned they may face significant revenue reductions. These carriers indicate that a significant portion of a local exchange company's total revenue is from switched access charges. They also claim that any significant switched access revenue losses would place pressure on a company to raise rates for other services.

In contrast to this perspective, other parties participating in the task force point out that the significance of IP-enabled services on local exchange carrier revenues will be dependent upon a wide variety of factors. Some of these factors include: intercompany compensation ultimately applied to IP-enabled services traffic, the extent switched access revenue may be replaced by reciprocal compensation arrangements and subscription to DSL access lines, the extent IP-enabled service substitutes for traditional local and long distance telephone service, the market penetration that IP-enabled services achieve, and the legal and regulatory treatment that is applied to various IP-enabled services.

Although IP-enabled services may impact the switched access revenue of all local exchange carriers, any impact would likely be especially noticeable on those companies who serve predominately rural areas. For instance, for rural telecommunications companies in Missouri, the relative dependence on access revenues is substantially greater than for large urban companies, both because the unit costs are higher in smaller central offices and because local calling scopes are traditionally substantially smaller than in urban areas resulting in a presumably higher percentage of network usage for toll services.

In short, whether discussing sales tax, relay services, access charges or assessments, the outcome is dependent on the extent to which traditional voice services provided via basic local telecommunications lines are migrated to IP-enabled platforms. One can compare the number of IP-enabled lines to the reduction in basic local lines. It is then possible to estimate the loss in revenues associated with that reduction in basic local telecommunications lines. These estimates can then be used to formulate general assumptions about the impact of IP-enabled services on those areas largely dependent on telecommunications revenues.

IX. Differential Treatment Based on Technical Differences or Characteristics

In the NPRM, the Commission asks if there are technical differences or other characteristics of particular IP-enabled services that suggest providers use the underlying network in different ways or to provide different functionality to end users that warrants differential treatment. The Task Force identified four basic applications of IP-enabled services technology: (1) Phone-to-phone VoIP, (2) Computer-to-phone VoIP, (3) Computer-to-computer VoIP and (4) cable TV VoIP. Although both traditional telephony and IP-enabled telephony utilize digital services, the transmission medium of IP-enabled services uses Internet protocol as a transport technology. IP-enabled services use software applications and computing devices that convert voice conversations into digitized packets and transmit these packets over either the public Internet or "managed" Internet protocol networks. When used as a replacement for traditional telephone services, IP-enabled services require a "broadband" connection to achieve the necessary speed and "always on" functionality.

The Commission, in its Pulver.com[4] and AT&T[5] decisions, found, at least on an interim basis, that there are technical differences that suggest providers use the underlying network in

[4] Memorandum Opinion and Order. *In the Matter of Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service.* WC Docket No. 03-45

different manners, and thus, should be treated differently. The MoPSC agrees with this assessment. Certain IP-enabled services, such as Pulver.com's Free Word Dialup (FWD) offering, are limited to communications between FWD members only and do not in any way involve communications that originate or terminate on the public switched telephone network. In contrast, the Commission found that AT&T's phone-to-phone service was an interexchange service that uses ordinary customer premises equipment (CPE) with no enhanced functionality, originates and terminates on the public switched network and undergoes no net protocol conversion. In short, the MoPSC suggests that any IP-enabled service that connects to the public switched network is a telecommunications service and as such should be treated similarly.

X. Roles of Competitive Marketplace and Regulation

In various sections of the NPRM, the Commission asks whether the proliferation of services and applications utilizing a common protocol may permit competitive developments in the marketplace to play the key role once played by regulation. In other words, is there a need to apply traditional economic regulation to providers of IP-enabled services? Some members of the Task Force maintain that the marketplace would not sufficiently discipline the conduct of IP-enabled services providers toward consumer protection in the absence of regulation. Other parties point to the lack of regulation for consumer products in other competitive markets as an example of why economic regulation is inappropriate. These parties generally suggest consumer protection rules were written in an age of monopolies and are outdated in a competitive environment. They also maintain consumers have recourse through uniform consumer protection laws and small claims courts.

Given these positions, it is interesting to note that in an increasingly competitive environment, the MoPSC recorded almost 6,600 telecommunications-related consumer

[5] Order. *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are*

complaints/inquiries in 2003. This number is far greater than the complaints/inquiries registered for non-competitive utilities such as gas, electric, water and sewer combined. Given the level of complaints/inquiries for telecommunications services, it appears that while the marketplace may eventually discipline a competitive telecommunications marketplace, regulatory protections may still be necessary, at least on a temporary basis.

XI. Role of States in Federal Regime

In paragraph 41 of the NPRM, the Commission asks, "What role could the states play in a federal regime?" The answer to this question depends on the ultimate classification for IP-enabled services. For those IP-enabled services deemed telecommunications services, a call that originates and/or terminates within a state's boundaries should be considered as having an intrastate telecommunications component regardless of how or where the traffic is routed. Determining the jurisdictional nature of the call may be problematic. The use of percentage interstate usage factors and interMTA factors are commonly used today for determining the jurisdiction of interexchange and wireless telecommunications traffic. Similar factors could be applied to IP-enabled services in determining an intrastate component. In an ever changing environment, it is reasonable to assume technical requirements may eventually be developed that would make it possible to determine the origin of an IP originated call. Other methods for determining jurisdiction may include: the point of interconnection, the location of the NPA NXX or the physical location of the North American Numbering Plan (NANP) individually-assigned number. At a minimum, the MoPSC suggests the FCC refer such jurisdictional issues to the Joint Board on Separations for review.

Exempt from Access Charges. WC Docket No. 02-361.

XII. Issues Related to 9-1-1

At paragraphs 51 through 57 of the NPRM, the Commission seeks comment on various 9-1-1 related issues. The Commission seeks input on the technical and operational capabilities of current IP-enabled services and other VoIP services to work with 9-1-1 service. Most members of the Task Force indicated that emergency services are critical to society and should be available through IP-enabled services in some manner. However, there appears to be much disagreement as to the technical abilities of providing such 9-1-1 service. The MoPSC respectfully suggests the Commission work with the various industry associations, such as the National Emergency Number Association's VoIP-Packet Technical Committee, ATIS (the industry standards body) and the Commission's "Solution Summits" in developing industry standards and technology. The MoPSC also recommends the Commission include state commissions in reviewing and developing solutions for emergency service related issues.

XIII. Disability Access Order

At paragraph 58 of the NPRM, the Commission seeks to refresh the record of its Notice of Inquiry related to its *Disability Access Order*. Specifically, the Commission asks, "Do and should the rules established in the *Disability Access Order* apply in the context of VoIP or other IP-enabled services?" Relying strictly on the *Disability Access Order*, the answer is dependent on the classification of IP-enabled services. In its *Disability Access Order*, the Commission noted, Section 255 requires equipment manufacturers to ensure that equipment is designed, developed and fabricated to be "accessible to and usable by" individuals with disabilities, if readily achievable. Section 255 also requires service providers to ensure that the service is "accessible to and usable by" individuals with disabilities, if readily achievable. The Commission stated Section 255 applies to any "manufacturer of **telecommunications** equipment or customer premises equipment" (emphasis added) and to any "provider of

telecommunications service". (emphasis added) The Commission asserted ancillary jurisdiction to include two non-telecommunication services, voicemail and interactive menu service, but declined to expand the meaning of "telecommunications services" to include information services for purposes of disability access.

To the extent certain IP-enabled services are deemed telecommunications services, the rules of the *Disability Access Order* apply. To the extent IP-enabled services are deemed information services, current rules clearly do not apply. However, the MoPSC urges the Commission to expand its disability rules to include those IP-enabled services determined to be information services if those services originate or terminate on the public switched telephone network. To the end user, the method of transportation is transparent. To the end user, a telephone call is a telephone call and disability access requirements should apply, at a minimum, in all instances where an IP-enabled call touches the public switched network.

XIV. Issues Related to Carrier Compensation

Beginning at paragraph 61, the Commission seeks comment on several carrier compensation issues. Specifically, the Commission seeks comment as to what extent access charges should apply to VoIP or other IP-enabled services. If charges are assessed, should they be the same as the access charges assessed on providers of telecommunications services, or should the charges be computed and assessed differently? If charges should be assessed, should carriers pay access charges or compensation under section 251(b)(5) of the Act? The entire intercarrier compensation scheme is currently under review in CC Docket No. 01-92, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, so any compensation decision related to VoIP or other IP-enabled service should be considered in the context of that proceeding. As noted, at least preliminarily in WC Docket No. 02-361, the Commission determined that under current rules, the service that AT&T described in its petition was found to

be telecommunications service upon which access charges may be assessed. AT&T's service at issue in the petition was found to be like any other interexchange service that uses ordinary customer premises equipment with no enhanced functionality, originates and terminates on the public switched telephone network, undergoes no net protocol conversion and provides no enhanced functionality to the end user. In other words, it traverses the PSTN much like any other long distance telephone call. The MoPSC agrees with this scenario. To the extent an IP-enabled call connects with and utilizes the public switched network, the traffic should be subject to access charges absent further determination by the Commission in the unified intercarrier compensation regime docket.

The Commission also asks if assessment rates lower than access rates would require increases in universal service support or end user charges. Assuming the Commission maintained a policy of revenue neutrality, rates for IP-enabled services lower than traditional access rates would require local exchange companies to be compensated for IP-enabled traffic from some other means. The result would be either an increase in universal service support, an increase in end user recurring charges or the application of a fixed monthly charge similar to the subscriber line charge. No matter what the funding mechanism, the burden falls to the end user to provide the additional compensation for loss of access revenue. As the MoPSC pointed out in its comments in the unified intercarrier compensation regime docket, this is particularly troubling when there are no apparent mechanisms in place to ensure customers of interexchange carriers or, in this case, more specifically, customers of IP-enabled service providers will see lower rates as a result in the shifting of compensation.

If no access charges, or different charges, are assessed for VoIP or IP-enabled service providers' use of the PSTN, the Commission asks if identification of this traffic would result in significant additional incremental costs. As previously indicated, determining the jurisdictional

nature of the call may be problematic. Factors are commonly used today for determining the jurisdiction of interexchange and wireless telecommunications traffic. Similar factors could be applied to IP-enabled services in determining appropriate jurisdictional components for compensation purposes. Technical requirements may eventually be developed that would also make it easier to determine the origin of an IP originated call. Since mechanisms for calculating factors currently exist for other types of traffic, the application of these factors to IP-enabled services should not result in a significant increase in incremental costs.

XV. Issues Related to Universal Service

The Commission, beginning at paragraph 63 seeks comment on several issues related to universal service. For instance, the Commission asks: (1) How would the regulatory classification of IP-enabled services affect the FCC's ability to fund universal service; (2) If certain classes of IP-enabled services are determined to be "information services," could or should the FCC require non-facilities-based providers of such services to contribute to universal service pursuant to its permissive authority; (3) If the FCC exercises its permissive authority, how could it do so in an equitable and nondiscriminatory fashion; and, (4) How would the providers of IP-enabled services identify the portion of the service revenues that constitute end-user telecommunications revenues? The Commission is in the process of examining many issues related to universal service and any decisions in response to this NPRM must also be incorporated with decisions in the universal service docket. For instance, the Commission issued an NPRM seeking comments on changes to the methodology for collecting universal service contributions, such as connection-based or telephone number-based mechanisms, that could require, on a technically and competitively neutral basis, universal service contributions for all entities that benefit from connecting to the public switched telephone network.

Whether IP-enabled services are classified as telecommunications services or information services, any provider using a portion of the PSTN to originate and/or terminate calls should contribute to the USF. Some Task Force members indicate that IP-enabled providers already contribute to the universal service fund as an end user. Since the IP-enabled provider purchases telecommunications service from a local exchange carrier, they contend a portion of the fees they pay to the carriers, much like any other end user, includes a USF surcharge. The MoPSC encourages the Commission to refer issues related to USF and IP-enabled services to the Joint Board on Universal Service.

The Commission also seeks comment on how service providers would identify interstate and international telecommunications revenues? As stated previously, currently companies apply various factors to determine the jurisdictional nature of calls. These same factors could be used to determine the jurisdictional nature of IP-enabled calls, whether telecommunications or information services by definition, to determine which calls originate and/or terminate on the public switched telecommunications network, making the calls eligible as contributories to the USF. As the IP-enabled services industry matures, more definitive factors may be developed that can be specifically applied to this type of traffic.

The Commission also seeks comment on several issues related specifically to contribution methodologies: (1) If IP-enabled services are not subject to contributions, what would be the magnitude of the forgone contribution revenues over the next five years; (2) Does the advent of IP-enabled services weigh in favor of any specific reforms under consideration in the *Universal Service Contribution Methodology* proceeding (i.e., telephone number-based methodology, connections-based methodology, etc); (3) How would regulatory classification of IP-enabled services impact each of the current universal service support mechanisms (high cost, low income, schools and libraries, rural health care); and (4) How can the FCC ensure that

services supported by universal service bear no more than a reasonable portion of the costs associated with facilities that are used to provide both supported and unsupported services?

These issues are much the same issues as raised in the Commission's February 26, 2003, public notice seeking comments on an FCC Staff study regarding alternative universal service fund contribution methodologies CC Docket No. 96-45. In its comments in that docket, the MoPSC asserted the current mechanism provides confusion and uncertainty on behalf of the consumer and noted that since contributors are allowed to choose whether to recover the assessment through a line-item assessment, include the recovery in rates and bundles, or utilize a blended recovery approach, it becomes difficult for the consumer to effectively compare pricing among competitors. The MoPSC suggested the FCC revise its current philosophy to mandate that all contributors treat the recovery of the USF assessment in a consistent manner, whether it is through implicit innovative pricing options or through an explicit surcharge on end-users.

Addressing the specific methodologies that were proposed in that docket, the MoPSC suggested the Commission should ensure that any modifications to the current universal service fund assessment mechanism do not discriminate against any consumers or telecommunications providers, are competitively neutral, and are easily administered. The MoPSC asserted in its comments that a decision adhering closely to these principles will be consistent with the Telecommunications Act of 1996 ("the Act"), and will help to ensure a sustainable universal service fund that will balance the interests of both contributors and the general public.

Although the MoPSC is not in a position to speculate on the impact that IP-enabled services might have on the magnitude of foregone contributions revenues over the next five years, the MoPSC supports a decision making permanent the interim changes the Commission made to the universal service fund collection methodology through its December 13, 2002 Report and Order. Essentially, instead of assessing contributions based upon revenues accrued

as much as six (6) months prior, assessment contributions should now be based upon the carriers' projections of their collected end-user interstate and international telecommunications revenues for the following quarter. This will reduce the impact that customer churn has on each carrier's contribution. For example, carriers who have lost customers to alternative technologies will not be responsible for assessment after the customer has switched. Such a mechanism will result in less customer confusion and increased sustainability of the universal service fund in the future. The MoPSC recommended and continues to recommend that the then interim measure, including the true-up mechanism, be permanent if the Commission continues with a revenue-based assessment contribution.

In the February 2003 public notice, there was a proposal (referred to as Projected Assessments under Proposal 3 – Telephone Number-Based Methodology in the Staff Study) that is a telephone number-based assessment. The Commission sought comment as to whether the proposal might encourage public policy goals such as number conservation and the optimization of existing telephone number resources. The numbers-based approach seemed like the easiest proposal to administer and track since providers would be assessed on the basis of telephone numbers assigned to end users, while assessing special access and private lines that do not have assigned numbers on the basis of the capacity of those end-user connections. Since most IP-enabled services also rely on assigned numbers from the North American Numbering Plan (NANP), it appears the numbers based approach would be an easy methodology to assess IP-enabled services. Since services such as Pulver.com's Free World Dialup do not use NANP numbers, it may be appropriate to allow exemptions to this requirement in certain circumstances.

XVI. Rural and Non-rural ETC Eligibility

The Commission seeks comment as to what extent the classification of IP-enabled services affect the eligibility of rural and non-rural ETCs for high cost support? To the extent

that IP-enabled services are deemed telecommunications services, providers should be eligible to seek ETC status. The Commission and states would then hold those providers to the same eligibility criteria as wireless providers and competitive local exchange providers. However, recognizing the Commission is in the process of reviewing several issues related to the current universal service fund, issues related to IP-enabled services are directly related to existing problems that have been identified with the fund. For instance, should broadband services qualify as funded services; how does one allocate the loop to account for that portion providing broadband service versus that portion providing plain old telephone service; how does one count second lines to subscribers. Once again, the MoPSC urges the Commission to work closely with the Joint Board on Universal Service to address these issues.

XVII. Impact on the Cost of Providing Service on the Public Switched Network

The Commission, in paragraph 66, asks: "Will migration to IP-enabled services lower or raise the cost of providing service on the public switched network or IP-enabled platforms?" This is largely dependent on the results of the unified intercarrier compensation regime docket. To the extent that IP-enabled services that connect to the public switched network are determined to be information services, or telecommunications services not subject to access charges or some other means of compensation, IP-enabled services could increase the cost of providing service. Since estimates indicate that by 2007 approximately 2.4% of the nation's wireline service will be provided by IP-enabled service, it is anticipated that the public switched network will still carry a large portion of the voice traffic. Even though the PSTN will still carry a large portion of the traffic, carriers potentially will receive less compensation for that traffic in an environment where IP-enabled services are deemed information services or telecommunications services not subject to compensation. Similarly, if the Commission determines that some lesser form of compensation is appropriate, revenue neutrality will be necessary to prevent an increase in the

cost of providing service. Revenue neutrality will be achieved through a shift in cost recovery from access charges to something akin to a subscriber line charge, increased basic local rates or increased universal service support. As previously stated, any increase to the customer is a concern since there is not a guaranteed decrease in toll rates or the rates for IP-enabled services.

XVIII. Applicability of Title II Regulation

At paragraph 73, the Commission seeks comment on whether the various economic regulations set forth in Title II and the Commission's rules apply to any class of IP-enabled service provider given that the customer often can obtain these services from multiple, intermodal, facilities- and non-facilities-based service providers. Title II and the Commission's rules require carriers to provide communications upon reasonable request at rates, classifications and practices that are just and reasonable; prohibit unjust or unreasonable discrimination in charges, practices, classifications, regulation, facilities or services against similarly situated third-party customers require providers to interconnect directly or indirectly with the facilities and equipment of other such providers; require LEC number portability entitle providers of telecommunications services to use certain ILEC network elements on an unbundled basis and at cost-based rates; and require facilities-based common carriers to provide the basic transmission services underlying their enhanced services on a nondiscriminatory basis pursuant to tariffs.

Missouri statutes require any company providing telecommunications service in Missouri to have a certificate of service authority from the MoPSC. Such certification allows the state to have a record and contact information of those companies providing various types of services within the state. Certification also allows state commissions to ensure minimum consumer protection rights are enforced. If an IP-enabled services provider is providing basic local telecommunications service, the IP-enabled services provider should be required to adhere to the same requirements as other providers of basic local telecommunications service, including such

things as quality of service requirements, tariff filing requirements, directory listing requirements, and consumer safeguards.

Several parties on the Task Force commented that market forces should dictate the quality and service levels to which these providers operate. As previously indicated, the MoPSC received a significant amount of complaints/inquiries for an increasingly competitive telecommunications environment when compared to non-competitive industries. The increase in telecommunications complaints/inquiries suggests the competitive environment is not quite ready to be free from traditional Title II regulation.

Similarly, if an IP-enabled services provider is providing basic local service, that provider should have interconnection rights and access to telephone numbers and unbundled network elements. Even if IP-enabled services are deemed information services, the MoPSC would expect some IP-enabled services providers to create affiliate companies that offer basic local exchange service in order to gain such access to interconnection abilities, telephone numbers and unbundled network elements.

XIX. Jurisdictional Analysis of Intrastate Access Charges

With respect to issues directly impacting rural carriers, the Commission, in paragraph 75 states, "Noting that rural ILECs derive a significant portion of revenues from access charges, how might a jurisdictional analysis affect the level of intrastate access charges that rural ILECs receive?" As previously stated, there is great concern that a jurisdictional analysis that finds IP-enabled services as interstate in nature would have a significant impact on intrastate access revenues. An analysis of the 2001 MoPSC Annual Reports for 37 rural Missouri companies indicates that 80% of total operating revenues were reported as access charges (including state, federal and special access charges, federal end user charges and federal universal service funds). State access revenues were reported as 33% of total operating revenues.

Based on data gathered in Missouri Case No. TR-2001-65[6] the maximum potential exposure per access line per month for the loss of all intrastate switched access revenues for the 37 rural Missouri companies was calculated. The maximum potential impact varies from a loss of $54.97 per access line per month to a loss of $8.55 per access line per month. The average impact would be approximately $23.27 per access line per month, assuming for purposes of these comments a complete displacement of current intrastate access charge revenue streams.

XX. Implications for Rural Communities and Rural Providers

The Commission also asked if there are other implications for rural communities and rural providers. The Task Force also identified potential transiting traffic issues that may have an impact on rural providers. IP-enabled service calls that are originated and/or terminated via the public switched telephone network eventually hit a switch. The IP-enabled service call potentially may hit more than one switch, depending on the routing of the call. Some carriers indicate they do not have an obligation to provide transiting service for other carriers' traffic, which may include IP-enabled services traffic bound for the Internet or bound for an end-user using a telephone to respond to IP-enabled service communications. Wireless and IP-enabled service providers typically obtain interconnection agreements with the larger/urban companies. The interconnecting companies, either directly or indirectly, provide a "transiting" service to other carriers that are connected through the PSTN. If the appropriate agreements are not in place and traffic is not properly identified, traffic may be terminated incorrectly and there may be jurisdictional compensation issues associated with IP-enabled services calls.

[6] *In the Matter of an Investigation of the Actual Costs Incurred in Providing Exchange Access Service and the Access Rates to be Charged by Competitive Local Exchange Telecommunications Companies in the State of Missouri*.

XXI. Issues Related to Consumer Protection

Finally, the Commission, beginning at paragraph 71, seeks comment on consumer protection issues related to subscribers of VoIP or other IP-enabled services. For instance, the Commission seeks comment on whether it is necessary to extend the following customer protections afforded in the Act to IP-enabled services: (1) customer proprietary network information requirements; (2) Section 214, requiring common carriers to obtain authorization before constructing, acquiring, operating or engaging in transmission over lines of communications or discontinuing, reducing or impairing telecommunications service to a community; (3) Section 258, prohibiting slamming; (4) Sections 201 and 258 encompassing the truth-in-billing rules; and (4) Section 226, ensuring customers are able to reach their preferred long distance carriers from public telephones and receive sufficient information about rates for operator services.

Once again, there is disagreement as to whether market forces will discipline such practices as required by the Act. At a minimum, to the extent that IP-enabled service providers are found to be providing basic local telecommunications service, consumer protections designed to prevent slamming, enforce truth-in-billing and ensure customers are able to choose their long distance providers should be afforded to those customers using IP-enabled services. Since the CPNI rules are designed to protect a customer's private, personal information, this consumer protection should also be afforded whether IP-enabled services are found to be information services or telecommunications services.

XXII. Summary of Comments

In summary, the MoPSC appreciates the opportunity to provide comment on the many issues surrounding IP-enabled services. However, as indicated throughout these comments, many of the issues the Commission raises in context of this proceeding are directly related to

other dockets pending before the Commission. The MoPSC respectfully encourages the Commission to consider all relevant factors related to such issues as intercarrier compensation, universal service and public safety issues, as opposed to making decisions in individual dockets that may conflict and create regulatory uncertainty. The MoPSC also encourages the Commission to refer jurisdictional and universal service issues to the Joint Boards on Separations and Universal Service.

Respectfully submitted,

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